IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3298 OF 2005

IN

SUIT NO.2977 OF 2005

Jayaben Hirji Shah through
C.A. Shri.Vikas H. Shah. ...Plaintiff.

vs.

1.Jyotsna Constructions Pvt.Ltd.
And others. ...Defendants

Mr.R.R.Mishra, for Plaintiff.

Mr.A.Y.Bookwala i/b. Ms.Manisha Kapadia, for Defendant nos.1 & 2.

Mr.B.B.Saraf i/b. M/s.Shah & Sanghavi, for Defendant no.3.

CORAM: D.K.DESHMUKH,J.

DATED: 26th June,2007.

P.C.:-

1. This is a notice of motion taken out by

the plaintiff. The plaintiff has filed the suit for decree of declaration of two agreements which, according to the plaintiff, has been entered into by the defendants with the plaintiff in relation to two flats. Both the agreements are of the same date. By this notice of motion, the plaintiff is seeking injunction restraining the defendant no.1 from transferring the flats to anybody else. The defence of the defendants is that the plaintiff has come to the Court with false case and that those agreements were entered into in the year 1998. According to the defendants, there was no transaction between the plaintiff and the defendants for sale of the flats. It was a loan transaction and as a security in the year 1998 two blank agreements were signed.

2. I have heard the learned Counsel appearing for both the sides. I have gone through the record. The case of the plaintiff that two

agreements were executed in the year 1994 appears to be false on the face of the agreements itself. The learned Counsel appearing for plaintiff handed over to me a xerox copy of the agreement. The xerox copy of the agreement shows that to the agreement the order made by the Bombay Municipal Corporation is annexed that is about grant of permission under the Maharashtra Town Planning Act. That permission as per the endorsement made on the order was extended by order dated 31.8.1996. The presence of that endorsement dt. 31.8.1996 completely falsifies the case of the plaintiff that the agreement was entered into in the year 1994. There are also other features which have been pointed by the learned Counsel appearing for defendants which clearly indicate that the plaintiff has come to the Court with completely false case that in the year 1994 the agreements were entered into. What is most surprising is that the plaintiff has filed an affidavit of one Bharat D.Parekh who according to

the plaintiff has signed the agreement as witness and that he was the broker in the transaction. That affidavit is dated 27.7.2004. The suit has been filed in the year 2005. This notice of motion has also been taken out in the year 2005, but neither in the plaint nor in the affidavit filed in support of this notice of motion there is even mention of the affidavit dated 27.7.2004 of the said Bharat Parekh. This clearly indicates that the affidavit is a fabricated document. One more aspect to be noted is that according to para. 5 of that affidavit, on 17.3.1994 on the plaintiff paying full amount of consideration, the agreement was entered into by defendant nos. 1 and 2 in favour of the plaintiff. But perusal of the agreement on which the plaintiff relies shows that in the agreement itself it is shown that only an amount of Rs.60,000/- has been paid and the balance amount is yet to be paid. It is thus clear that not only that the plaintiff does not have even prima facie

case but the case of the plaintiff appears to be false. Obviously therefore, the plaintiff is not entitled to any interim relief. In my opinion, in view of the conduct of the plaintiff exemplary cost is required to be imposed on the plaintiff for producing fabricated document and coming to the Court with false case. The notice of motion is disposed of. The plaintiff is directed to pay as and by way of cost of this notice of motion Rs.15,000/- to defendant nos. 1 and 2 and Rs.15,000/- to defendant no.3.